

108TH CONGRESS
2D SESSION

S. 2237

To amend chapter 5 of title 17, United States Code, to authorize civil copyright enforcement by the Attorney General, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 25, 2004

Mr. LEAHY (for himself and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend chapter 5 of title 17, United States Code, to authorize civil copyright enforcement by the Attorney General, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting Intellectual
5 Rights Against Theft and Expropriation Act of 2004”.

6 **SEC. 2. AUTHORIZATION OF CIVIL COPYRIGHT ENFORCE-**
7 **MENT BY ATTORNEY GENERAL.**

8 (a) IN GENERAL.—Chapter 5 of title 17, United
9 States Code, is amended by inserting after section 506 the
10 following:

1 **“§ 506a. Civil penalties for violations of section 506**

2 “(a) IN GENERAL.—The Attorney General may com-
 3 mence a civil action in the appropriate United States dis-
 4 trict court against any person who engages in conduct con-
 5 stituting an offense under section 506. Upon proof of such
 6 conduct by a preponderance of the evidence, such person
 7 shall be subject to a civil penalty under section 504 which
 8 shall be in an amount equal to the amount which would
 9 be awarded under section 3663(a)(1)(B) of title 18 and
 10 restitution to the copyright owner aggrieved by the con-
 11 duct.

12 “(b) OTHER REMEDIES.—

13 “(1) IN GENERAL.—Imposition of a civil pen-
 14 alty under this section does not preclude any other
 15 criminal or civil statutory, injunctive, common law or
 16 administrative remedy, which is available by law to
 17 the United States or any other person;

18 “(2) OFFSET.—Any restitution received by a
 19 copyright owner as a result of a civil action brought
 20 under this section shall be offset against any award
 21 of damages in a subsequent copyright infringement
 22 civil action by that copyright owner for the conduct
 23 that gave rise to the civil action brought under this
 24 section.”.

25 (b) DAMAGES AND PROFITS.—Section 504 of title 17,
 26 United States Code, is amended—

1 (1) in subsection (b)—

2 (A) in the first sentence—

3 (i) by inserting “, or the Attorney
4 General in a civil action,” after “The copy-
5 right owner”; and

6 (ii) by striking “him or her” and in-
7 serting “the copyright owner”; and

8 (B) in the second sentence by inserting “,
9 or the Attorney General in a civil action,” after
10 “the copyright owner”; and

11 (2) in subsection (c)—

12 (A) in paragraph (1), by inserting “, or the
13 Attorney General in a civil action,” after “the
14 copyright owner”; and

15 (B) in paragraph (2), by inserting “, or
16 the Attorney General in a civil action,” after
17 “the copyright owner”.

18 (c) TECHNICAL AND CONFORMING AMENDMENT.—

19 The table of sections for chapter 5 of title 17, United
20 States Code, is amended by inserting after the item relat-
21 ing to section 506 the following:

“506a. Civil penalties for violation of section 506.”.

22 **SEC. 3. AUTHORIZATION OF FUNDING FOR TRAINING AND**
23 **PILOT PROGRAM.**

24 (a) TRAINING AND PILOT PROGRAM.—Not later than
25 180 days after enactment of this Act, the Attorney Gen-

1 eral shall develop a program to ensure effective implemen-
2 tation and use of the authority for civil enforcement of
3 the copyright laws by—

4 (1) establishing training programs, including
5 practical training and written materials, for qualified
6 personnel from the Department of Justice and
7 United States Attorneys Offices to educate and in-
8 form such personnel about—

9 (A) resource information on intellectual
10 property and the legal framework established
11 both to protect and encourage creative works as
12 well as legitimate uses of information and
13 rights under the first amendment of the United
14 States Constitution;

15 (B) the technological challenges to pro-
16 tecting digital copyrighted works from online pi-
17 racy;

18 (C) guidance on and support for bringing
19 copyright enforcement actions against persons
20 engaging in infringing conduct, including model
21 charging documents and related litigation mate-
22 rials;

23 (D) strategic issues in copyright enforce-
24 ment actions, including whether to proceed in a
25 criminal or a civil action;

1 (E) how to employ and leverage the exper-
2 tise of technical experts in computer forensics;

3 (F) the collection and preservation of elec-
4 tronic data in a forensically sound manner for
5 use in court proceedings;

6 (G) the role of the victim copyright owner
7 in providing relevant information for enforce-
8 ment actions and in the computation of dam-
9 ages; and

10 (H) the appropriate use of injunctions, im-
11 poundment, forfeiture, and related authorities
12 in copyright law;

13 (2) designating personnel from at least 4
14 United States Attorneys Offices to participate in a
15 pilot program designed to implement the civil en-
16 forcement authority of the Attorney General under
17 section 506a of title 17, United States Code, as
18 added by this Act; and

19 (3) reporting to Congress annually on—

20 (A) the use of the civil enforcement au-
21 thority of the Attorney General under section
22 506a of title 17, United States Code, as added
23 by this Act; and

1 (B) the progress made in implementing the
2 training and pilot programs described under
3 paragraphs (1) and (2) of this subsection.

4 (b) ANNUAL REPORT.—The report under subsection
5 (a)(3) may be included in the annual performance report
6 of the Department of Justice and shall include—

7 (1) with respect to civil actions filed under sec-
8 tion 506a of title 17, United States Code, as added
9 by this Act—

10 (A) the number of investigative matters re-
11 ceived by the Department of Justice and United
12 States Attorneys Offices;

13 (B) the number of defendants involved in
14 those matters;

15 (C) the number of civil actions filed and
16 the number of defendants involved;

17 (D) the number of civil actions resolved or
18 terminated;

19 (E) the number of defendants involved in
20 those civil actions;

21 (F) the disposition of those civil actions,
22 including whether the civil actions were settled,
23 dismissed, or resolved after a trial;

1 (G) the dollar value of any civil penalty im-
2 posed and the amount remitted to any copy-
3 right owner; and

4 (H) other information that the Attorney
5 General may consider relevant to inform Con-
6 gress on the effective use of the civil enforce-
7 ment authority;

8 (2) a description of the training program and
9 the number of personnel who participated in the pro-
10 gram; and

11 (3) the locations of the United States Attorneys
12 Offices designated to participate in the pilot pro-
13 gram.

14 (c) AUTHORIZATION OF APPROPRIATIONS.—There
15 are authorized to be appropriated \$2,000,000 for fiscal
16 year 2005 to carry out this section.

○